

Planning

Growth & Development

Delegated officer report for planning application

Application no. 134144/LP/2022

Date registered valid: 23 June 2022

Proposal: Erection of a single storey rear extension to create additional living accommodation and elevational alterations to front of property including fence.

Address: 4 Bankwell Street, Manchester, M15 5LN

Ward(s): Hulme Ward

Applicant: Jocelyn Alphonse Pokam 4 Bankwell Street, Manchester, M15 5LN

Agent (if any): Tomislav Vuletic FLOCC Studio Ltd 157 Harcourt Street, Stockport, SK5 6UP

Case officer: Robert Tyrer
Tel: 0161 234 4068
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Recommendation: GRANT

Date of recommendation: 28 July 2022

Application details

Type of application: Certificate Lawful Development Proposed

Development type: Certificates of lawfulness

Date of site visit: Not Required

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

No neighbour notifications have been printed and sent.

Site notice

No site notice has been produced

Press advert

No press advert had been published

Departure from Development Plan: No

Environmental Statement: Not required

Description of site/building

The application site relates to a modern brick built terraced three storey townhouse with an integral garage and front driveway. At the rear is a garden area that leads to a communal parking courtyard.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The area has been the subject of extensive regeneration efforts over the past 30 years and is now a predominantly residential area on the fringes of the City Centre interspersed with green area and a mixture of primary, secondary, and higher education institutions.

Description of development

The applicant is seeking a certificate of lawful proposed development for the erection of a single storey rear extension and conversion of garage with associated elevational alterations to create additional living accommodation.

Consultations & Notification Responses

Not Required.

Environmental Health – Environmental Health have recommended a Watching brief condition.

Issues

Legislative Issues

Sections 191 and 192 of the Town and Country Planning Act 1990 provide for anyone (not just a person with a legal interest in the land) to apply to the local planning authority (LPA) for a lawful development certificate (LDC). A certificate is a statutory document certifying:

(1) in the case of an application under section 191, the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition; or

(2) in the case of an application under section 192, the lawfulness of proposed operations on, or use of land.

The onus of proof in regard to (1) is firmly on the applicant and the issue of a certificate will depend on the on factual evidence provided about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The relevant test of the evidence in this matter is “the balance of probability” and the applicants own evidence does not need to be corroborated by independent evidence. If the LPA have no evidence to contradict the applicants version of events or make them less than probable, there is no good reason to refuse the issue of a certificate.

In regard to (2), this provides that, if the LPA are supplied with information satisfying them that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect; and, in any other case, they shall refuse the application.

In short, the purpose section 192 is to enable any person who wishes to find out whether any proposed use or operations would be lawful to apply to the LPA for that purpose

The application needs to describe the proposal with sufficient clarity and precision to enable the LPA to understand (from a written description and plans) exactly what is involved in the proposal; and to submit whatever supporting information or legal submission that are to be relied upon in order to satisfy the LPA that a certificate should be granted for the proposal.

In making their decision on an application under section 192, the LPA ask themselves the hypothetical question - *"If this proposed change of use had already occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"* In doing so, the LPA will not only consider whether the proposal would involve "development" requiring an application for planning permission, but whether it would involve a breach of any existing condition or limitation imposed on a grant of planning permission which has been acted upon, and which therefore constrains what can be done on the land. The LPA will not make a proposal fit a scenario; the only question is whether the proposal made by the applicant is lawful at the time of submission.

The Application and History

This application is pursued under subsection (1) of section 192, which provides for an application to determine whether any proposed use or operations would be lawful for planning purposes.

The applicant is seeking a certificate of proposed lawful development for a single storey rear extension, elevational alterations in association with a garage conversion and a fence.

A previous application to vary condition No. 6 attached to planning permission **066945/FO/SOUTH1/03** to allow conversion of garage to additional living accommodation was refused in 2011 and was appealed under reference: **Appeal C APP/B4215/A/11/2148651**. The appeal related to a number of properties but in the case of "Appeal C" this related to the applicant site and no.6 Bankwell Street the inspector decision was as follows:

The appeal is allowed and planning permission is granted for the conversion of the garages to living accommodation at 4-6 Bankwell Street, Hulme, Manchester, Greater Manchester M15 5LN in accordance with the terms of the application, Ref. 095034/JO/2010/S1, dated 7 December 2010.

The appeal decision notes that the conversion of the garages had already been carried out at the address and therefore considered that the appeal application at this address and next door were retrospective.

Further clarification was sought with the agent that the bedroom was still in existence and that the room had not returned to a garage or any other use within the dwellinghouse. A response from the agent and drawings show that the bedroom is still in existence.

Therefore, with the room use established, an assessment shall be undertaken as to whether the proposal accords with Part 1, Schedule 2, Class A and with Part 2, Schedule 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

The Assessment

The proposal for the rear extension and elevational alterations will be considered under Part 1, Schedule 2, Class A of the Town and Country (General Permitted Development) Order 2015 (as amended) - the relevant legislation when determining the enlargement, improvement or other alterations to dwellinghouses.

Under Class A for "*the enlargement, improvement or other alterations of a dwellinghouse*" the status of the original house needs to be taken into account, as this state the base from which all measurements should be taken. Under the Order, the term "original" means:

in relation to a building existing on 1st July 1948, as existing on that date and, in relation to a building built on or after 1st July 1948, as so built

There has been one previous application at the property as discussed above and the property appears to be unchanged since it was built in circa early 2000s.

The Town and Country Planning (General Permitted Development) (England) Order 2015

Class A – enlargement, improvement or other alteration of a dwellinghouse

A. The enlargement, improvement or other alteration of a dwellinghouse.

Development not permitted

A.1 Development is not permitted by Class A if—

(a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class G,M,MA, N, P, PA or Q of Part 3 of this Schedule (changes of use);

Complies [N/A] Dwellinghouse pre-dates any of these changes.

(b) as a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);

Complies [✓]

(c) the height of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the highest part of the roof of the existing dwellinghouse;

Complies [✓]

(d) the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse;

Complies [✓]

(e) the enlarged part of the dwellinghouse would extend beyond a wall which—

- (i) forms the principal elevation of the original dwellinghouse; or
- (ii) fronts a highway and forms a side elevation of the original dwellinghouse;

Complies [✓] – The proposed extension is located to the rear of the property.

(f) subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey and—

(i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or

Complies [✓] – The property is a mid-terrace and the proposed extension would have a rearward projection of 3 metres.

(ii) exceed 4 metres in height;

Complies [✓] – The proposed extension would have a maximum height of 2.74 metres.

(g) for a dwellinghouse not on article 2(3) land nor on a site of special scientific interest, the enlarged part of the dwellinghouse would have a single storey and—

(i) extend beyond the rear wall of the original dwellinghouse by more than 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse, or

(ii) exceed 4 metres in height;

Complies [N/A]

(h) the enlarged part of the dwellinghouse would have more than a single storey and—

(i) extend beyond the rear wall of the original dwellinghouse by more than 3 metres, or

(ii) be within 7 metres of any boundary of the curtilage of the dwellinghouse opposite the rear wall of the dwellinghouse;

Complies [N/A] – Relates only to a single storey rear extension.

(i) the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres;

Complies [✓] – Eaves height would be 2.63 metres.

(j) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would—

(i) exceed 4 metres in height,

Complies [✓]

(ii) have more than a single storey, or

Complies [N/A]

(iii) have a width greater than half the width of the original dwellinghouse; or

Complies [✓]

(ja) any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in subparagraphs (e) to (j);

Complies [N/A]

(k) it would consist of or include—

(i) the construction or provision of a verandah, balcony or raised platform,

Complies [✓] – None proposed.

(ii) the installation, alteration or replacement of a microwave antenna,

Complies [✓] – None Proposed

(iii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or

Complies [✓] – The proposal does not.

(iv) an alteration to any part of the roof of the dwellinghouse; or

Complies [✓]

(l) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).

A.2 In the case of a dwellinghouse on article 2(3) land, development is not permitted by Class A if—

(a) it would consist of or include the cladding of any part of the exterior of the dwellinghouse with stone, artificial stone, pebble dash, render, timber, plastic or tiles;

Complies [N/A] – The property is not located within article 2(3)land.

(b) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse; or

Complies [N/A] – The property is not located within article 2(3)land.

(c) the enlarged part of the dwellinghouse would have more than a single storey and extend beyond the rear wall of the original dwellinghouse.

Complies [N/A] – The property is not located within article 2(3)land.

Conditions

A.3 Development is permitted by Class A subject to the following conditions—

(a) the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;

Complies [✓] The drawings show that the materials for the extension will match those on the original dwellinghouse. The elevational changes at the front of the property will also be in similar appearance to those used in the construction of the exterior of the existing dwellinghouse.

(b) any upper-floor window located in a wall or roof slope forming a side elevation of the dwellinghouse must be—

(i) obscure-glazed, and

(ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed; and

Complies [✓] – No upper side windows are proposed

(c) where the enlarged part of the dwellinghouse has more than a single storey, or forms an upper storey on an existing enlargement of the original dwellinghouse, the roof pitch of the enlarged part must, so far as practicable, be the same as the roof pitch of the original dwellinghouse.

Complies [✓] – Proposal is single storey only.

The proposed fence shall be considered under the provision of Part 1, Schedule 2, Class A and with Part 2, Schedule 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015

Permitted development

A. The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

Development not permitted

A.1 Development is not permitted by Class A if—

- (a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed—
 - (i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons;
 - (ii) in any other case, 1 metre above ground level;
- (b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level;

Complies [✓] – The drawing indicates that the fence would be 2 metres in height.

- (c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater; or
- (d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building.

Interpretation of Class A

A.2 For the purposes of Class A, “school” includes—

- (a) premises which have changed use under Class S or T of Part 3 of this Schedule (changes of use) to become a state-funded school or registered nursery as defined in paragraph X of Part 3; and
- (b) a building permitted by Class C of Part 4 of this Schedule (temporary buildings and uses) to be used temporarily as a school, from the date the local planning authority is notified as provided in paragraph C.2(b) of Part 4.

Conclusion

In conclusion, the proposed single storey rear extension and elevational alterations complies with Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended and the proposed fence with with Part 2, Schedule 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).The application pursued under subsection (1) of section 192 should therefore be approved.

Human Rights Act 1998 considerations

This application needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the applicants (and those third parties, including local residents, who have made representations) have a right to a fair hearing and to this end the local planning authority must give full consideration to their comments.

Protocol 1 Article 1, and Article 8 where appropriate, confer(s) a right of respect for a person's home, other land and business assets. In taking account of all material considerations, including Council policy as set out in the Core Strategy and saved policies of the Unitary Development Plan, the Director of Planning, Building Control & Licensing has concluded that some rights conferred by these articles on the applicant(s)/objector(s)/resident(s) and other occupiers and owners of nearby land that might be affected may be interfered with but that that interference is in accordance with the law and justified by being in the public interest and on the basis of the planning merits of the development proposal. She believes that any restriction on these rights posed by the recommendation given is proportionate to the wider benefits of and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

Recommendation: GRANT

Condition(s) to be attached to decision for approval OR Reasons for recommendation to refuse

1) Grant on the basis that the proposed single storey rear extension and elevational alterations as shown on drawing WD2.2, WD3.2, WD3.3, WD5.3, WD5.4 Rev A and location plan received by the City Council constitutes permitted development in accordance with Part 1, Schedule 2, Class A and with Part 2, Schedule 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Appendix 1 – List of consultees & neighbours notified

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Aircraft Safeguarding Zone - Aircraft Safeguarding Zone - All Exceeding 90M
Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Area Team Boundary - Name: SOUTH AREA